

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 313 of 2009**

1. Beni Prasad Joshi, aged about 52 (45) years, Son of Late Shri Duli Chand Joshi;

2. Ashok Joshi, aged about 47(40) years, son of Late Shri Duli Chand Joshi;

Both are residents of Aamdi Dharamshala, Durg (C.G.)

----- Appellants/Defendants

Versus

Rai Saheb Madho Prasad Avam, Gajra Bai Chandrakar, Private Trust, Station Road, Durg (C.G.), through the President, Dr. Mangal Prasad Chandrakar Son of Late Shri Jageshwar Prasad Chandrakar, Station Road, Durg (C.G.)

----- Respondent/Plaintiff.

For Appellant	: Shri Shashi Bhushan, Advocate.
For Respondent	: None present

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/02/2020

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by defendants /appellants herein states as under:

“Whether the learned lower appellate Court was not justified in holding that the accommodation is required under clause (h) of sub-section (1) of Section 12 of the Chhattisgarh Accommodation Control Act, 1961 ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The plaintiff is a private Trust. It instituted a civil suit for eviction of the defendants on the ground enumerated under Section 12(1)(h) of the Chhattisgarh Accommodation Control Act, 1961 (henceforth "Act, 1961") stating *inter alia* that tenancy of the defendants has been terminated with effect from February, 1988 but they have not vacated the suit accommodation and the suit accommodation is required bonafidely for reconstruction as the necessary building permission has already been granted by the Municipal Corporation; necessary estimates have been prepared and the necessary funds for the said purpose are also available with the plaintiff and, therefore, decree, as prayed for, be granted in its favour, which the defendants opposed stating *inter alia* that the suit accommodation is not required bonafidely and in order to harass the defendants the instant civil suit has been filed by the plaintiff, respondent herein.

(2.2) The trial Court, by its judgment dated 15.07.1996, found the relationship of landlord & tenant established between the plaintiff & defendants and held that the plaintiff has failed to prove the grounds under

Section 12(1)(h) of the Act, 1961 and the defendants have also not perfected their title over the suit accommodation by way of adverse possession and dismissed the suit.

(2.3) The plaintiff preferred first appeal there-against. The First appellate Court, by its judgment dated 31.03.2009, reversed the judgment of the trial Court and granted decree under Section 12(1)(h) of the Act, 1961 in favour of the plaintiff, against which, this second appeal has been preferred by the appellants/defendants, in which, substantial question of law has been formulated, which has been set out in opening paragraph of the judgment.

(3) Mr. Shashi Bhushan, learned counsel appearing for the appellants/defendants would submit that requirement of Section 12(1)(h) read with Section 12 (7) of the Act, 1961 is not made out, therefore, the first appellate Court could not have granted decree in favour of the plaintiff, as such, decree granted by the first appellate Court deserves to be set aside.

(4) None for the respondent/plaintiff, though served.

(5) I have heard learned counsel appearing for the appellants/defendants, and considered his submissions and gone through the record with utmost circumspection.

(h) that the accommodation is required *bonafide* by the landlord for the purpose of building or rebuilding or making there to any substantial additions or alterations and that such building or rebuilding or alterations cannot be carried out without accommodation being vacated;

12(7) No order for the eviction of a tenant shall be made on the ground specified in clause (h) of subsection (1), unless the Court is satisfied that the proposed reconstruction will not radically alter the purpose for which the accommodation was let or that radical alteration is in the public interest, and that the plans and estimates of such reconstruction have been properly prepared and that necessary funds for the purpose are available with the landlord."

(7) On careful perusal of the aforesaid provisions, it is quite vivid that decree under Section 12(1)(h) cannot be granted unless the Court is satisfied that the proposed

reconstruction will not radically alter the purpose for which the accommodation was let or that radical alteration is in the public interest and the plans and estimates of such reconstruction have been properly prepared and the necessary funds for the purpose are available with the landlord.

(8) The plaintiff, in the plaint averments as well as in the statement made before Court and his witnesses Chowaram (PW-1), Dr. M.P. Chandrakar (PW-2) & Dr. B.L. Chandrakar (PW-3) have clearly stated that the suit accommodation is required bonafidely for reconstruction in the public interest as plaintiff is a public Trust and encroachment is being done by defendants; map have already been sanctioned by the Municipal Corporation and necessary estimates of such reconstruction has already been properly prepared; funds is also available with the plaintiff/Trust for reconstruction of the building.

(9) The trial Court, after appreciating oral and documentary evidence available on record, dismissed the suit but the first appellate Court, after considering the requirement under Section 12(1)(h) of the Act, 1961 came to the conclusion that requirement of Sections 12(1)(h) and 12(7) of the Act, 1961 is made out and granted decree in favour of the plaintiff.

(10) The first appellate Court, in its impugned judgment, has clearly recorded a finding that the reconstruction/alteration cannot be carried out without the accommodation being vacated; and the necessary building permission has already been granted by the Municipal Corporation; and the funds are available with the Trust for reconstruction of the suit accommodation, as such, granted decree under Section 12(1)(h) of the Act, 1961 in favour of the plaintiff finding that the public interest is involved in the reconstruction of the said suit accommodation. The said finding recorded by the first appellate Court is a finding of fact based on material available on record and I do not find it either perverse or contrary to record. The substantial question of law is answered in favour of the plaintiff.

(11) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. Appellate decree be drawn accordingly. No cost (s).

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

